

men and women dying of leukemia. They can't use it to grow new eye tissue to help those going blind from certain types of cell degeneration. They can't use it to grow new pancreas cells to cure diabetes. They can't use it to regenerate brain tissue to cure those with Parkinson's disease or Alzheimer's disease. They can't use it to grow spinal cord tissue to cure those who have been paralyzed in accidents or by war wounds.

Congress should ban the production of human being by cloning. But we should not ban scientific research that has so much potential to bring help and hope to millions of citizens. As J. Benjamin Younger, Executive Director of the American Society for Reproductive Medicine, has said:

We must work together to ensure that in our effort to make human cloning illegal, we do not sentence millions of people to needless suffering because research and progress into their illness cannot proceed.

Let us work together. Let us stop this unnecessarily destructive know-nothing bill. Let us vote against cloture tomorrow and send this bill to committee, where it can receive the careful consideration it deserves. Together, we can develop legislation that will ban the cloning of human beings, without banning needed medical research that can bring the blessings of good health to so many millions of our fellow citizens.

Mr. President, I am delighted to join in this effort with my friend and colleague and our leader in this whole effort, the Senator from California, Senator FEINSTEIN.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. May I inquire as to the state of business in the Senate.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. ASHCROFT. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. The regular order is the nomination of Frederica A. Massiah-Jackson.

Mr. ASHCROFT. Thank you, Mr. President.

EXECUTIVE SESSION

NOMINATION OF FREDERICA A. MASSIAH-JACKSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The Senate continued with consideration of the nomination.

Mr. ASHCROFT. Mr. President, I rise to continue my argument and my debate in regard to this candidate for Federal judgeship nominated by President Clinton.

Earlier in the day, I had raised several objections to this particular nomination, and in response to my objections, a number of answers were devel-

oped on the part of the Senator from Pennsylvania. I want to return to my objections. I think they are well-founded, I think they are important, and I think they should be observed and understood by the Senate.

I raised the objection today that the absence of judicial temperament on the part of this judicial nominee was an infirmity which should be considered by the Senate. In particular, I said that she had used the foulest of profanities known to the English language in open court and in reference to a prosecutor.

In explaining that, a proponent of this nomination indicated, "Well, everyone has used profanity at one time or another." Let me just point out that I think the use of profanity in open court by the judge presiding over the court is different than the fellow who hits his finger with a nail while fixing the fence in the backyard. As a matter of fact, I think it would be important for me to just outline just what happened in this instance.

In the case of *Commonwealth v. Hannibal*, in response to a prosecutor's attempt to be afforded an opportunity to be heard—the prosecutor was asking for the judge's attention—the following exchange took place on the record:

The COURT [judge]: Please keep quiet, Ms. McDermott.

Ms. MCDERMOTT [for the Commonwealth]: Will I be afforded—

The COURT: Ms. McDermott, will you shut your [blanking] mouth?

Judge Massiah-Jackson was formally admonished by the Judicial Inquiry and Review Board for using intemperate language in the courtroom.

I realize she has apologized in this respect for having done so, but I think it tells us something about the temperament of the individual involved. I don't think it is very instructive just to concede that other people may have used profanity at some place or on the ball field or in the cloakroom. The use of profanity in this Chamber would be a serious affront to this Chamber, as would any personal attack or other indiscretion or discourtesy in this Chamber. But let me go to a second example that relates to the judicial temperament displayed by this individual.

The case of *Commonwealth v. Burgos* and *Commonwealth v. Rivera*. During a sentencing proceeding, the prosecutor told Judge Massiah-Jackson that she had forgotten to inform one of the defendants of the consequences of failing to file a timely appeal. Such a failure would prejudice the Commonwealth on appeal. Judge Massiah-Jackson responded to this legal argument with profanity, stating: "I don't give a [blank]," and the word is probably inadmissible.

A district attorney, John Morganelli, the Democratic District Attorney of Northampton County, Pennsylvania, has suggested that the reason there are not more instances of this foul language on the record is that Judge Massiah-Jackson's principal court reporter routinely "sanitized" the

record," and the instances I have referred to here occurred in settings where, according to District Attorney Morganelli, there was not the regular court reporter.

Now, I know that people lose their temper and that people use profanity, but I think these incidents reflect the absence of the requisite judicial temperament, but I think it reflects more than that. When you indicate to officers of the court that you are disparaging their character, when you describe someone's mouth with foul language, you are not just using foul language, you are attributing a character deficit to an officer of the court, a prosecutor. I think that is unacceptable.

Perhaps those would be the kinds of things to be ignored or overlooked or to pass by, but I find it disconcerting. I find it disconcerting that it would be suggested that, well, since everybody uses profanity, it's OK for judges to use profanity in open court.

I raised the issue earlier today of the contempt for prosecutors and police officers on the part of Judge Massiah-Jackson. It was suggested that the fact that she revealed two undercover police officers and pointed them out to be observed in the courtroom was a way of threatening their safety, because drug dealers would have an extra chance to look at them and know who they are and to be cognizant of the fact that they might be persons from whom a drug buy might be made sometime and, be careful, these people would be part of a prosecution effort.

The Senator defending the judicial nominee of the President indicated, "Well, these people had already testified in court, so it perhaps didn't matter." Well, it may not have. It may have been that during the testimony, they were seen by the other people. But let's look exactly at what Judge Massiah-Jackson said about these individuals and see if it tells us something about whether or not we would want this kind of person to be a Federal judge appointed for life, a Federal judge endowed with the authority of the United States of America, answerable to no one.

As the officers were leaving the courtroom, the judge told spectators in the court:

Take a good look at these guys and be careful out there.

I submit to you that for a judge to say, take a good look at these police officers and basically say, "Watch out for them, they're the guys who might apprehend you in your nefarious activities," tells us something about the judge.

I quoted earlier the president of the Philadelphia Fraternal Order of Police, who said that the officers involved felt like this was a threat to them, that it would expose them additionally to bodily harm.

It was suggested by a Senator defending the nomination that that was unreasonable, and it may not be as big a threat as some might think it to be,

but Detective Sergeant Daniel Rodriguez confirmed the outrageous courtroom incident in a signed letter to the Senate. The detective sergeant had the following comments regarding this incident:

I thought "I hope I don't ever have to make buys from anyone in this courtroom." They would know me, but I wouldn't know them. What the judge said jeopardized our ability to make buys and put us in physical danger.

It may well be that there are arguments that could be expressed in the Senate a couple hundred miles away that it really didn't put these officers in danger. I can't really say whether it would or it wouldn't, but I am prepared to take the word of the police officer involved, and I am prepared to consider his statement to be honest, and I am prepared to understand that he feels restrained now as a police officer in a way that he wouldn't have felt restrained previously.

It appears to me that Judge Massiah-Jackson was willing to make statements which would impair the capacity of police officers to function. Detective Sergeant Daniel Rodriguez felt strongly enough about it to make such a comment in writing.

Detective Terrance Jones, the other undercover officer that was identified and disclosed and about whom the warning was issued to the people in the courtroom by Judge Massiah-Jackson, also confirmed the facts of the situation in a signed statement to the committee staff. He stated that the "comments jeopardized our lives."

It may be that there are those on the floor of the Senate who don't take the comments that seriously. I really think that Judge Massiah-Jackson must not have taken seriously the threat to the integrity of these officers; she must not have believed them. Maybe some Senators don't believe them either. But Detective Jones said that the comments of the judge jeopardized the lives of police officers. Maybe not, but I would tend to think if I were an undercover police officer, that kind of exposure and identification, even if you had already testified, they must have felt that there was something there that was substantially threatening.

He wrote in his letter:

As a law enforcement officer who happens to be an African-American, I am appalled that self-interest groups and the media are trying to make the Massiah-Jackson controversy into a racial issue. This is not about race, this is about the best candidate for the position of Federal judge.

And it is obvious he doesn't think the best candidate is Judge Massiah-Jackson after she, in fact, jeopardized his life, according to him.

Earlier today, I also raised the point about contempt for prosecutors and police officers, and that seemed to be construed as some sort of inappropriate attack.

In this case, let me talk about another example, Commonwealth v. Hicks. In an action that led to a rever-

sal by the appellate court, Judge Massiah-Jackson dismissed charges against the defendant on her own motion.

Although the prosecution was prepared to proceed, the defense was not ready because the defense was missing a witness. A police officer who was scheduled to testify for the defense apparently had not received his subpoena. The defense requested a continuance, saying, "OK, we'll try this later. We'll clear up this mixup concerning the subpoena." The Commonwealth stated it had issued the subpoena.

The defense did not allege any wrongdoing or failure to act on the part of the Commonwealth. It did not say the Commonwealth failed to issue the subpoena, that they fouled this up, that the case was fouled up as a result of misdeeds on the part of the State or the Commonwealth.

Nevertheless, without any evidence or prompting from the defense counsel, Judge Massiah-Jackson simply did not believe that the Commonwealth's attorney subpoenaed the necessary witness. So here you have the defense unprepared to go forward, and the judge held the Commonwealth liable for the defense's unpreparedness, and on the court's own motion dismissed the case.

Here is a judge that expresses her contempt for the court and the prosecutors, profaning the court and profaning the prosecutors. Here is a judge who expresses her contempt for police officers by inappropriately identifying them and warning the community against police officers. You have a judge who is willing to dismiss cases on her own motion even when the defense is willing to just take a continuance to clear the matter up and to bring the witnesses to court.

What it turns out to be in the case is that the missing defense witness had been on vacation. The subpoena had been issued by the Commonwealth. The officer had not received it, but the Commonwealth had done everything it possibly could to issue the subpoena to help assist the defense in the preparation of the trial by providing the necessary witness. And Judge Massiah-Jackson's decision obviously was reversed on appeal as an abuse of discretion. But it tells us something. It tells us something about this judge and this judge's attitude toward police officers and prosecutors.

The appellate court concluded, having carefully reviewed the record:

We are unable to determine the basis for the trial court's decision to discharge the defendant. Indeed, the trial court was unable to justify its decision by citation to rule or law.

When a judge does something and cannot cite any rule or any law to support it, the judge is just imposing her own preference, her own personal preference in the matter.

The imposition of judges' personal preferences is one of the real challenges we face in this country in a crisis of what I call "judicial activism."

One of the other issues I raised regarding Judge Massiah-Jackson is the issue of leniency in sentencing.

Here is an example. Commonwealth vs. Nesmith. The defendant had a criminal history of 3 prior juvenile arrests and 1 adjudication, 19 prior adult arrests, 8 convictions, 3 commitments, 3 violations and 2 revocations. If we were at the right season of the year we could then end with "and a partridge in a pear tree." Nineteen prior arrests, 8 convictions.

He was tried and convicted of striking a pedestrian with his car, leaving her seriously injured—broken legs, pelvis, four bones of the back—by the side of the road, fleeing the scene of the crime, and then beating into unconsciousness one of the woman's relatives who tried to thwart his escape. Judge Massiah-Jackson sentenced him to 2 years' probation—probation. This is an individual with eight previous convictions. Judge Massiah-Jackson sentenced him to 2 years' probation, a sentence that deviated more than 3 years below the lowest point of the standard range of the guidelines and more than 2 years below even the lowest point of the mitigated range.

The defendant committed these crimes while on parole, having just been released from prison for an assault conviction. Over the Commonwealth's strenuous objection, Judge Massiah-Jackson sentenced him to 2 years' probation. Judge Massiah-Jackson, however, explained that the defendant's actions were "not really criminal. He had merely been involved in a car accident."

You wonder about a judge who can look at an individual who hits a pedestrian, flees the scene of the crime, beats into unconsciousness one of the women's relatives who tried to thwart his escape, and then characterizes the activity as merely being the activity of one who has been involved in a car accident.

Here is another instance of leniency in sentencing.

Commonwealth vs. Freeman. The defendant shot and wounded Mr. Fuller in the chest because Mr. Fuller had laughed at him. I don't know how you know someone is laughing at you or whether they are laughing because they just have a thought of something funny. In any event, the defendant shot and wounded Fuller in the chest because Fuller had laughed at him.

Judge Massiah-Jackson convicted the defendant of a misdemeanor instead of felony aggravated assault. She sentenced him to 2 to 23 months—not 2 to 23 years—2 to 23 months, and then immediately paroled him so that he did not have to serve jail time. The felony charge would have had a mandatory 5- to 10-year prison term. Judge Massiah-Jackson explained her decision, stating that "the victim had been drinking before being shot"—the victim had been drinking before he was shot—"and that (the defendant) had not been involved in any other crime since the incident."

I think the people of the United States of America deserve a judge who will say that an individual who shoots someone, perhaps for smiling or laughing, is an individual who deserves a serious sentence.

Here is yet another example of lenient sentencing, Commonwealth vs. Burgos. During a raid on the defendant's house, police seized more than 2 pounds of cocaine, along with evidence that the house was a distribution center—2 pounds of cocaine. The street value of 2 pounds of cocaine is astronomical.

The defendant, Mouin Burgos, was convicted. Judge Massiah-Jackson sentenced the defendant only to 1 year's probation. Then-District Attorney Ron Castille criticized Judge Massiah-Jackson's sentence as "defying logic" and being "totally bizarre." He commented:

This judge just sits in her ivory tower . . . She ought to walk along the streets some night and get a dose of what is really going on out there. She should have sentenced these people to what they deserve.

Well, earlier this afternoon I had the privilege of relating the fact that virtually the entire law enforcement community of Pennsylvania has noticed this predisposition to be antagonistic to law enforcement.

The Executive Committee of the Pennsylvania District Attorneys' Association voted unanimously to voice their objection to the appointment of this individual to the Federal bench. The Fraternal Order of Police, both locally and nationally, has expressed its opposition to this nominee. And frankly, the Democrat district attorney in Philadelphia sent a letter saying this is the worst judge that she had ever seen. The letter also states her opinion that whoever is appointed to the Federal district court for that district should be a black woman—that they need to have a black woman on the bench there—but also stating that Judge Massiah-Jackson cannot be the one.

It takes real courage for a district attorney to say that about a judge who will stay in her current role if the Senate heeds the warning of the district attorney. And the district attorney will have to continue to send prosecutors into that court and be involved in that legal environment. But not only did District Attorney Abraham from Philadelphia, who is a Democrat, make such a contention, District Attorney Morganelli also made the same kind of statements, saying that we really have no business confirming an individual whose record is so replete with this kind of abuse.

These points are points that I believe are easily understood. It takes a substantial amount of effort to obscure these points. But these points are understood—and they are painfully understood by those who are closest to this situation and involved in the courts on a daily basis: the police officers and prosecutors. Obviously, we would not expect defense attorneys to be here objecting to this nominee.

This nominee lacks the fundamental commitment to the judicial system, to respect it, and to respect the participants of it. She has demonstrated that on many occasions. And profanity in the courtroom is important. It reflects a disregard for the court. But when it is profanity directed to officers of the court, it is a disregard for the system itself. And I do not think it is appropriate to minimize that. It makes a difference to me. I think it makes a difference to the American people whether or not we have judges who respect the institution over which they preside.

I raise the issues about the antagonism to the police. It is pretty clear that when you warn the community to be careful of the police, to "watch out," that you reveal a disrespect for this system that we do not need to institutionalize on the Federal bench. And when you use virtually every contrivance that you could possibly imagine, and even then when the appellate court says there is no basis in law, no basis in rule that would support the kind of leniency that you find in some of these cases, I think it is pretty clear that we have an individual whose predisposition is so favorable to the violators of the law that those who would enforce the law and the need for the culture to enforce the law are at a serious disadvantage in a courtroom like that.

It is clear to me—very clear to me—that this is a nominee whose resume does not merit reward, whose recommendation by the President should be withdrawn rather than confirmed.

During the closing hours of the session last year, prior to the break for the year-end recess, the Judiciary Committee was meeting. There was a debate over whether to send this nominee to the floor. And among those who are now saying that we have to have more meetings and more time in the committee were those who carried me to one of the anterooms off the committee room, and begged me, "Let's send this to the floor so it can be debated on the floor." I said, "I don't think this is appropriate to send to the floor." And they said, "You don't have to support her on the floor, but do not stop the committee from acting to send her to the floor at this time."

Frankly, the rules of the committee would have made it possible for me at that time to have stopped this individual from coming to the floor. It just strikes me as ironic that those who prevailed on me to send this nominee to the floor, and to allow her to come to the floor, are now arguing that somehow those of us who want to vote on this candidate on the floor or a withdrawal by the President are doing an injustice—that somehow by accommodating them and providing a basis which would allow the candidate to make it to the floor, that we were now wanting to act on that candidate and somehow wanting to act inappropriately.

I think all of that is just so much process—whether you had the committee hearings, and how many you had. The key to this whole situation is, what kind of information do you have? And do you have the capacity to make a good judgment about whether or not to confirm a nominee of the President of the United States?

This nominee who disrespects the system, disrespects the participants, disrespects law enforcement, this nominee who has done virtually everything within her power to make it easy on those who have violated the law and tough on those who would enforce the law, does not merit our confirmation. The President ought to withdraw her nomination, and, absent that, the Senate should vote to reject this nomination for the Federal bench.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to depart from the regular order and enter a period of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I ask to be recognized to speak in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HUMAN CLONING PROHIBITION ACT

Mrs. FEINSTEIN. Mr. President, I will follow on the comments of the distinguished Senator from Massachusetts, since the Senate is scheduled tomorrow to vote on a cloture motion, whether to move Senate bill 1601, a bill that prohibits the cloning of human beings. I will clarify where we are and what the issues really are.

Let me be clear at the outset: I support a ban on the cloning of human beings. There is widespread agreement that the cloning of a human being should be prohibited. That agreement, I believe, exists in the Congress. It clearly exists in the scientific community. It exists in the medical community, in the religious community, and it exists in virtually every patient and health group that I know of.

I submit, Mr. President, that the cloning of human beings is scientifically unsafe; it is dangerous; it is morally unacceptable; and it is ethically flawed. We should enact a ban. We should pass a law that establishes the illegality of human cloning and sets forth appropriate penalties.

The argument I make today is not the ban, but how the bill before the Senate tomorrow, the Bond-Frist bill, would affect scientific research. I introduced identical bills with Senator KENNEDY, Senate bills 1602 and 1611 which would protect research that someday, we believe, is likely to provide cures for many of the most dreaded diseases.